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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. MANUEL RIOS, Defendant and Appellant.	2d Crim. No. B290998 (Super. Ct. No. 1479640) (Santa Barbara County)

Manuel Rios appeals the judgment entered after a jury convicted him on one count of committing a forcible lewd act upon a child under the age of 14 (Pen. Code,[1] § 288, subd. (b)(1)), six counts of aggravated sexual assault of a child under the age of 14 (§ 269, subds. (a)(1), (4), & (5)), and four counts of oral copulation or sexual penetration with a child under 10 years of age (§ 288.7, subd. (b)). The trial court sentenced him to 135 years to life in state prison. Appellant contends the evidence is insufficient to establish the corpus delicti of three of the offenses of which he

[1] All statutory references are to the Penal Code.

was convicted. In supplemental briefing, he asks us to reverse certain fines, fees and assessments imposed at sentencing and remand the case to the trial court for an ability to pay hearing in accordance with *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*). We affirm.

STATEMENT OF FACTS

In 2010, T.A. rented a room in appellant's house for herself and her daughters Jane Doe 1, born in 2009, and Jane Doe 2, born in 2007. T.A. and her daughters lived with appellant until 2015. T.A. often left the girls alone with appellant and told them she thought of him as their uncle.

Jane Doe 1 and Jane Doe 2 both testified that appellant repeatedly molested them while they were living with him.[2] Jane Doe 2 did not remember how old she was when appellant first molested her or how many times he had done so. On T.A.'s birthday, appellant told Jane Doe 2 to accompany him to the garage. In the garage, appellant placed Jane Doe 2 on the floor, pulled down her pants, and put his finger in her vagina. At least one other time, appellant took Jane Doe 2 into the garage and put his penis in her vagina.

On more than one occasion, appellant molested Jane Doe 2 in the backyard. On another occasion, appellant inappropriately touched both Jane Doe 2 and Jane Doe 1 as they sat on his lap in the kitchen. Jane Doe 2 did not remember ever being molested by appellant in the living room or bathroom.

In April 2015, Jane Doe 1 told her kindergarten teacher that "her uncle had touched her in the middle of the night." The

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[2] Although Jane Doe 1 and Jane Doe 2 were unable to identify appellant in court, they both testified that the man who molested them was named Manuel and that they called him Meño. T.A. identified appellant as Meño.

police were called and T.A. was summoned to the school. With T.A.'s consent, Santa Maria Police Detective Jose De Leija took both girls to a hospital and interviewed them separately. Jane Doe 1 told the detective that she remembered appellant molesting her on at least three separate occasions and used a drawing of an anatomically correct girl to identify where appellant had touched her.

Jane Doe 2 told Detective De Leija that appellant first molested her when she was five or six years old. She recounted the molestations to which she later testified, although she recalled the incident on T.A.'s birthday taking place in the kitchen rather than the garage. She also said that appellant sometimes took her into the bathroom and penetrated her vagina with his penis.

Appellant was arrested and agreed to speak to Detective De Leija after waiving his *Miranda*[3] rights. During the interview, appellant admitted he began sexually assaulting Jane Doe 2 when she was about five years old and recounted several such instances of abuse. Once, while sitting with Jane Doe 2 on the couch in the living room, appellant put his finger in her vagina and rubbed her vaginal lips with his penis. Appellant also recounted another incident in the living room when he orally copulated Jane Doe 2 as she sat on the couch. He acknowledged molesting Jane Doe 2 on more than 10 occasions, but denied that he ever had sexual intercourse with her. When the detective asked appellant about Jane Doe 1, he said he did not remember ever molesting her.

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436, [16 L.Ed.2d 694].

DISCUSSION

Corpus Delicti

Appellant's convictions of aggravated sexual assault on counts 5, 6, and 7 are based on findings that he sexually penetrated, raped, and orally copulated Jane Doe 2 on the couch in the living room. Appellant contends his convictions on these counts must be reversed because although he confessed to those offenses, the prosecution failed to establish the corpus delicti of the charges. We are not persuaded.

"'[T]he prosecution must prove the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause,' and cannot do so by relying exclusively on the statements of the defendant. [Citation.] The corpus delicti requirement ensures that a defendant will not be convicted of a crime that never happened. [Citation.] Proof of the corpus delicti of a crime may be made by circumstantial evidence and need not amount to proof beyond a reasonable doubt. [Citation.] Rather, the amount of independent proof required is 'quite small,' "'slight,'" or "'minimal,'" amounting only to a prima facie showing permitting a reasonable inference a crime was committed. [Citation.] Once the corpus delicti has been established, the defendant's statements may be considered for their full value. [Citation.]" (*People v. Tompkins* (2010) 185 Cal.App.4th 1253, 1259 (*Tompkins*).)

Tompkins—which appellant does not cite in his briefs—is squarely on point and dispositive of his claim. The defendant in that case was convicted of multiple counts of lewd acts against his minor daughter. He argued that the prosecution failed to prove the corpus delicti of six of the charges because "the only evidence to support those counts was his own statements" to an investigator, in which he described the specific acts of

molestation. (*Tompkins*, *supra*, 185 Cal.App.4th at p. 1259.) The court of appeal concluded that because the victim's testimony generally described numerous instances of molestation, including that "defendant molested her more than once but less than 50 times, [that] she had visitation with defendant approximately every other weekend during that period, and defendant molested her on some, but not all, of those visits," and she also told an investigator that the defendant had touched her "'on many occasions,'" the evidence "was amply sufficient" to establish the corpus delicti for the six specific counts of molestation that defendant challenged. (*Id.* at p. 1260.) The court explained that "separate evidence is not required as to each individual count to establish the corpus delicti; rather, evidence that multiple molestations took place will establish the corpus delicti for multiple counts. [Citation.]" (*Ibid.*)

Tompkins establishes that when a victim of child molestation is unable to provide a description of each instance of molestation, proof of the corpus delicti for multiple counts of molestation will be satisfied by evidence that the victim was sexually molested on multiple unspecified occasions. The rule exists because "[i]t would practically close the doors against the prosecution of many of such wrongs if girls of tender years were required to give detailed and unvarying description of each transaction and its circumstances." (*People v. Durfee* (1947) 79 Cal.App.2d 632, 634.)

Although Jane Doe 2 could not recall exactly how many times appellant molested her and was unable to relate the details of every incident, she testified that he molested her on multiple occasions over a period of several years. She also told Detective De Leija that appellant began molesting her when she was five or six years old and that he had done so "[m]any times." This

evidence was "amply sufficient" to establish the corpus delicti of counts 5 through 7. (*Tompkins*, *supra*, 185 Cal.App.4th at p. 1260.)

Dueñas

As a component of his sentence, appellant was ordered to pay a $520 court security fee (§ 1465.8), a $390 criminal conviction assessment (Gov. Code, § 70373), a $10,000 victim restitution fine (§ 1202.4, subd. (b)), and a $1,230 sex offense fine (with penalty assessments) (§§ 290.3, 1464). The court also imposed and stayed a $10,000 parole restitution fine (§ 1202.45). Relying on *Dueñas*, *supra*, 30 Cal.App.5th 1157, appellant asserts in supplemental briefing that the court violated his due process rights by imposing these fines, fees and assessments without first considering his ability to pay them.

In *Dueñas*, the court concluded that "due process of law requires the trial court to conduct an ability to pay hearing and ascertain a defendant's present ability to pay before it imposes court facilities and court operations assessments under . . . section 1465.8 and Government Code section 70373." (*Dueñas*, *supra*, 30 Cal.App.5th at p. 1164.) The court also concluded that "although . . . section 1202.4 bars consideration of a defendant's ability to pay unless the judge is considering increasing the fee over the statutory minimum, the execution of any restitution fine imposed under this statute must be stayed unless and until the trial court holds an ability to pay hearing and concludes that the defendant has the present ability to pay the restitution fine." (*Ibid.*)

With respect to appellant's $10,000 restitution fine, the trial court had the authority, even before *Dueñas*, to "consider[]" the defendant's "[i]nability to pay" whenever it "increase[ed] the amount of the restitution fine" in excess of the $300 minimum.

(§ 1202.4, subds. (b)(1), (c).) Sex offense fines imposed under section 290.3 are also subject to a determination of the defendant's ability to pay. (§ 290.3, subd. (a) [providing that sex offense fine shall be imposed "unless the court determines that the defendant does not have the ability to pay the fine"].) When a statute mandates a fine but requires the court to consider the defendant's ability to pay, the burden is on the defendant to object or demand a hearing to determine the ability to pay. (*People v. McMahan* (1992) 3 Cal.App.4th 740, 749-750.) Appellant did not object or demand a hearing regarding his ability to pay the restitution and sex offense fines, so he forfeited his right to challenge those fines on appeal. (*People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1033, fn. 12. [§ 290.3 sex offense fine]; *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1154 [§ 1202.4 restitution fine].)

Because appellant failed to object to the $10,000 restitution fine by asserting an inability to pay, he cannot be heard to complain that the court failed to consider his ability to pay the $520 court security fee and $390 criminal conviction assessment. "As a practical matter, if [appellant] chose not to object to a $10,000 restitution fine based on an inability to pay, he surely would not complain on similar grounds regarding an additional [$910] in fees [and assessments]." (*People v. Gutierrez*, *supra*, 35 Cal.App.5th at p. 1033.)

In any event, "*Dueñas* is distinguishable. That case involved a homeless probationer, Velia Dueñas, who suffered from cerebral palsy and was unable to work. [Citation.]" (*People v. Johnson* (2019) 35 Cal.App.5th 134, 138.) Appellant, who was sentenced to 135 years to life in state prison, "is not similarly situated to the misdemeanor probationer in *Dueñas*. He was ordered to pay mandatory fees and a fine under the same

constellation of statutes that were at issue in *Dueñas*, but there the similarity ends." (*Id.* at p. 139.)

At the time of his arrest, appellant was employed as an automobile detailer and had been with the same employer for five years. Prior to that, he was employed for three years in the restaurant industry. "These are hardly indications of wealth, but there is enough evidence in the trial record to conclude that the total amount involved here did not saddle [appellant] with a financial burden anything like the inescapable, government-imposed debt-trap Velia Dueñas faced." (*People v. Johnson*, *supra*, 35 Cal.App.5th at p. 139.) Moreover, appellant will have the ability to earn wages while in prison. Any due process violation arising from the court's failure to consider appellant's ability to pay the court security fee and criminal conviction assessment was thus harmless beyond a reasonable doubt. (*Id.* at pp. 139-140 citing *Chapman v. California* (1967) 386 U.S. 18, 24 [17 L.Ed.2d 705].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Thomas P. Anderle, Judge

Superior Court County of Santa Barbara

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Mathews and Roberta L. Davis, Deputy Attorneys General, for Plaintiff and Respondent.